Supreme Court, U.S.
FILED
NOV 7 1990
JOSEPH F. SPANIOL, JR.
CLERK

No. 90-591

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

WILLIAM B. YOUNG, JR., et al.,
Petitioners,
vs.
NEW YORK CITY TRANSIT AUTHORITY, et al.,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

BRIEF OF *AMICUS CURIAE* NATIONAL COALITION FOR THE HOMELESS, INC. IN SUPPORT OF PETITIONERS

GARY L. BLASI
Counsel of Record

2026 Lake Shore Avenue
Los Angeles, California 90039
(213) 663-8731

LORETTA M. LYNCH
THA WIN
ROBERT M. HAYES

Attorneys for Amicus Curiae
National Coalition for the Homeless, Inc.

Lawyers Brief Service / Legal Printers / (213) 383-4457 / (714) 720-1510

No. 90-591

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

WILLIAM B. YOUNG, JR., et al.,
Petitioners,
vs.
NEW YORK CITY TRANSIT AUTHORITY, et al.,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

BRIEF OF *AMICUS CURIAE* NATIONAL COALITION FOR THE HOMELESS, INC. IN SUPPORT OF PETITIONERS

GARY L. BLASI
Counsel of Record

2026 Lake Shore Avenue
Los Angeles, California 90039
(213) 663-8731

LORETTA M. LYNCH
THA WIN
ROBERT M. HAYES

Attorneys for Amicus Curiae
National Coalition for the Homeless, Inc.

TABLE OF CONTENTS

Page

INTEREST OF AMICUS CURIAE..... 1

SUMMARY OF ARGUMENT..... 3

REASONS FOR GRANTING THE WRIT..... 6

I. GOVERNMENTAL SUPPRESSION OF THE SOLICITATION OF ALMS BY INDIVIDUALS DEPRIVES BEGGARS OF THEIR BASIC RIGHT TO SPEAK AND DEPRIVES THE COMMUNITY OF INFORMATION ABOUT OUR MOST SERIOUS SOCIAL PROBLEMS..... 6

II. THE SUPPRESSION OF BEGGING EFFECTIVELY DEPRIVES MANY AMERICANS OF THEIR ONLY MEANS TO SURVIVE..... 19

A. Many Americans Are Ineligible for Any Form of Public Assistance, Do Not Receive Public Assistance, Or Receive Assistance Insufficient to Meet Survival Needs..... 22

B. Despite the Generosity of Americans, Charities Do Not Provide for the Basic Needs of the Destitute..... 30

CONCLUSION..... 33

TABLE OF AUTHORITIES

CASES

Boos v. Barry,
485 U.S. 312 (1988) 8, 11

Carey v. Brown,
447 U.S. 455 (1980) 8, 33

City Council of Los Angeles
v. Taxpayers for Vincent,
466 U.S. 789 (1984) 14

Cohen v. California,
403 U.S. 15 (1971) 12

Cornelius v. NAACP Legal
Defense & Educ. Fund, Inc.,
473 U.S. 788 (1985) 9

Frisby v. Schultz,
487 U.S. 474 (1988) 14, 33

Gregory v. Chicago,
394 U.S. 111 (1969) 33

Perry Educ. Ass'n. v.
Perry Local Educators' Ass'n.,
460 U.S. 37 (1983) 15, 18

Quern v. Mandley,
436 U.S. 725 (1978) 25

Spence v. Washington,
418 U.S. 405 (1974) 13

Texas v. Johnson,
488 U.S.__, 109 S.Ct. 2533,
57 U.S.L.W. 4770 (1989) . . . 1, 12

Young v. New York City Transit Auth., opinion of the Court of Appeals for the Second Circuit, Appendix A to Petition for Writ of Certiorari 7, 11, 14, 16

STATUTES

Ala. Code §§ 38-4-1 (1990) 27

N.Y. Penal Law § 240.35(1) (Consol. 1990) 14

REGULATIONS

20 C.F.R. §§ 416.405 -.410 (1989) 24

45 C.F.R. 233.20(a)(2) (1989) . . . 25

CONGRESSIONAL HEARINGS

Food Security and Methods of Assessing Hunger in the United States: Hearings Before the House Select Comm. on Hunger, 101 Cong., 1st Sess. (1989) . . . 21

Private Sector Initiatives to Feed America's Poor: Hearings Before the Senate Comm. on Agriculture, Nutrition, & Forestry, 98 Cong. 1st Sess. (1983) 31

OTHER AUTHORITY

Benzinger, From Public Charity to Social Justice: The Role of the

Court in California's General Relief Program, 21 Loy. L.A.L. Rev. 497 (1988) 29

Boswell, J., The Life of Samuel Johnson, LL.D. 182 (1952) (1st ed. 1791) 17

Braudel, F., The Wheels of Commerce (1982) 16

Danziger, S. & P. Gottschalk, Unemployment Insurance and the Safety Net for the Unemployed, in Unemployment Insurance (W. Hansen & J. Byers, eds. 1990). 24

Families USA, SSI Aware (April 1989) 25

Farr, R., P. Koegel & A. Burnam, A Study of Homelessness & Mental Illness in the Skid Row Area of Los Angeles (1986) 21, 30

The Financial Times, America's Social Challenge: When Generosity is Not Enough, June 1, 1990, § I 31

Handler, J. & M. Sosin, Last Resorts: Emergency Assistance and Special Needs Programs in Public Welfare (1983) 32

Himmelfarb, G., The Idea of Poverty (1985) 17

Hopper, K., The Ordeal of Shelter: Continuities and Discontinuities in the Public Response to Homelessness, 4 Notre Dame J. of Law, Ethics and Pub. Pol'y, 301 (1989) 16

20 Housing Law Bulletin 65 (July/Aug. 1990) 26

Independent Sector, Giving and Volunteering in the United States (1990) 31

Katz, M., In the Shadow of the Poorhouse: A Social History of Welfare in America (1986) 23

Katz, M., The Undeserving Poor: From the War on Poverty to the War on Welfare (1989) 24

Langdon & Kass, Homelessness in America: Looking for the Right to Shelter, 19 Colum. J.L. & Soc. Probs. 305 (1985) . . 27, 28, 29

Lasdon, D. & D. Tobias, Below the Safety Net: A Study of Soup Kitchen Users in New York City (1987) 30

The Los Angeles Times, Up to 4.6 Million Are Losing Out on Special Benefits, April 6, 1990, 23 . . . 25

National Housing Task Force Report, A Decent Place to Live (1988) 20

P. Rossi, Down and Out in America: The Origins of Homelessness (1989) 21, 26

M. Sosin, P. Colun, & S. Grossman, Homelessness in Chicago: Poverty, Pathology, Social Institutions and Social Change (June 1988) (University of Chicago School of Social Service Administration Study) 21. 30, 32

United States Comm'n on Security and Cooperation in Europe, Homelessness in the United States (1990) 20, 23

U.S. Conference of Mayors, A Status Report on Hunger and Homelessness in America's Cities: 1989 (Dec. 1989) . 19, 20, 21

Urban Research & Engineering, Inc., Characteristics of General Assistance Programs (U.S. Dept. of Commerce, No. PB 84-115336, May 1983) . . . 27, 28

No. 90-591

In The

Supreme Court of the United States

October Term, 1990

William B. Young, Jr., et al.,

Petitioners,

v.

New York City Transit Authority, et al.,

Respondents.

BRIEF OF AMICUS CURIAE NATIONAL COALITION FOR THE HOMELESS, INC. IN SUPPORT OF PETITIONERS

INTEREST OF AMICUS CURIAE

The National Coalition for the Homeless, Inc. is a non-profit corporation, representing individuals and organizations from more than forty states who work with and for homeless people across America. The Coalition believes that this case presents issues of critical national importance. The

principles enunciated in the decision of the Court of Appeals, if allowed to stand, would permit every state and local jurisdiction to deprive thousands of our most desperate citizens of the right to express to their fellow human beings the urgency of their needs. The inevitable result for many would be the denial of the most fundamental of all human rights, the right to survive.

It is not only the poorest among us who would suffer. The richness of the public dialogue about our most fundamental social problems would also be impaired. The regulations upheld by the Court of Appeals permit an organized charity or religious order to solicit donations for the benefit of the needy while denying to the needy the right to speak for themselves. They thus permit government to determine who is worthy of

being a messenger of the poor, and to deny that role to the poor themselves. The Coalition includes many organizations that solicit charity for the benefit of the homeless. But the Coalition recognizes that it is only from the voices of the homeless that we know the nature and depth of our society's most pressing problems. No matter how effective the Coalition may be, there is no adequate substitute for the voices of the poor themselves.

SUMMARY OF ARGUMENT

The Coalition supports and joins in the arguments presented by Petitioners regarding the important First Amendment principles at issue in this case. This brief will emphasize the national importance of this case, which raises not only First Amendment issues, but

also issues that affect other fundamental human rights.

Contrary to widely held beliefs, many Americans cannot meet their basic needs for food and shelter through employment, government subsistence programs, or private charity. In order merely to survive, those who obey the law are compelled to choose either to seek help by speaking with strangers or to risk starvation.

The often-cited governmental "social safety net" thought to save the destitute from homelessness and starvation does not reach many categories of people. Even those who are theoretically eligible to receive the means of subsistence from these programs are denied them by bureaucratic red tape. Further, although Americans are a charitable and giving people, the

private sector provides for only a fraction of those in need, and charity is often directed toward those who seem most attractive to the giver. Single males, the mentally disabled, and members of racial minorities are all consequently underserved by the private sector.

With no other means to survive, people throughout history have been forced to solicit alms from others. And, in all ages, the more fortunate have been torn between seeking to suppress the sometimes disturbing message of the mendicant and following the values of charity and social obligation to which almost everyone subscribes in theory. Respondents have chosen the path of suppression. And the Court of Appeals, based solely on assertions about how listeners perceive

the message of the beggar, and upon purported "right reason" and "common sense" (A20),[1] has ratified that choice in a decision that conflicts with rights and values that are central to free expression.

REASONS FOR GRANTING THE WRIT

I. GOVERNMENTAL SUPPRESSION OF THE SOLICITATION OF ALMS BY INDIVIDUALS DEPRIVES BEGGARS OF THEIR BASIC RIGHT TO SPEAK AND DEPRIVES THE COMMUNITY OF INFORMATION ABOUT OUR MOST SERIOUS SOCIAL PROBLEMS.

In communities across America, homelessness among the destitute is a severe and growing problem. As explained below, neither the public nor the private sectors meets the needs of the very poor for shelter, food and

---

[1]References are to the opinion of the Court of Appeals, printed as Appendix A to the Petition for Writ of Certiorari in this case.

clothing. Many must therefore turn to begging in order to survive. The Court of Appeals would allow a total ban on begging, allowing government to deprive the poor of the right to ask others for the help. For many, the results will be catastrophic.

The principle enunciated by the Court of Appeals that begging is not protected speech, see Young v. New York City Transit Auth., at A16, A35, would permit every local authority in the United States to silence the voices of the poor and the homeless. Moreover, the Court of Appeals has conferred a license to accomplish this goal by laws that are not content-neutral. The regulation at issue expressly permits a volunteer for the National Coalition for the Homeless to speak to passersby, saying, "Please give me a dollar for someone who is

homeless and hungry," but denies at the same time and place the right of a homeless person to say, "Please give me a dollar for me and my child; we are homeless and hungry". Plainly, ". . . it is the content of the speech that determines whether it is within or without the statute's blunt prohibition." Carey v. Brown, 447 U.S. 455, 463 (1980). As in Boos v. Barry, 485 U.S. 312 (1988), an entire category of speech -- soliciting for oneself as opposed to soliciting for others -- is impermissibly subjected to a total ban.

If there is any principle fundamental to our public discourse, it is that all people have the right to speak for themselves. While the Court of Appeals dismisses out of hand the loss to the public dialogue resulting from restricting solicitation to organized

charities, the great weight of experience of the National Coalition for the Homeless and others is to the contrary. No matter how eloquent the spokesperson, no communication about homelessness or hunger can be presented by the sheltered and nourished as effectively as by the poor themselves. The content, power and effect of the messages are not, and can never be, the same. Further, it is hard to conceive of an instance in which "the nexus between solicitation and the communication of information and advocacy of causes"[2] is clearer. It is one thing for an academic or an advocate to explain how many people are turned away by the welfare bureaucracy, and to

---

[2] Cornelius v. NAACP Legal Defense & Educ. Fund, Inc., 473 U.S. 788, 799 (1985) (cited in the opinion of the Court of Appeals at A22).

seek funds for further research on the issue; it is quite another for the Petitioner Young to explain the same thing himself, in the concrete context of asking a fellow citizen for the subsistence he is unable to obtain elsewhere.[3]

That there is a significant difference in the content of the messages plainly underlies the decision of the Court of Appeals. Throughout the opinion, soliciting by the poor is distinguished from soliciting by corporations and charities solely on the basis of the perceptions of listeners. Soliciting by the poor is "experienced as transgressive conduct" which contributes to an "apprehensive state of mind". A18. Listeners "perceive[d] that

---

[3]See Appendix F to Petition for Writ of Certiorari, Supplemental Affidavit of William B. Young, Jr. at 3.

beggars and panhandlers pervade the system", but there was no indication that they "felt intimidated" by organized charities. A22-23 (emphasis added). The total ban on an entire category of speech is thus based entirely on the reactions of listeners. As in Texas v. Johnson, 488 U.S. ___, 109 S.Ct. 2533, 2543, 57 U.S.L.W. 4770, 4774 (1989), whether speech is prohibited depends entirely "on the likely communicative impact of [the] expressive conduct." And, while the government may in some circumstances limit speech based on its secondary effects, "[t]he emotive impact of speech on its audience is not a 'secondary effect' unrelated to the content of the expression itself." Id. (citing Boos v. Barry, 485 U.S. 312, 321).

There is, of course, nothing new in efforts to suppress the unpleasant information that many people suffer among us. What we cannot merely dismiss with stereotypes, we may try to brush aside or suppress. These are very human and understandable reactions. But the First Amendment does not permit the governmental suppression of unwelcome news or repugnant ideas. The same First Amendment that protects the right of one to burn our national flag,[4] and to wear obscene expressions[5], despite the effects on others, must surely protect the disabled person who rattles a coin in a cup, and does no more than speak to passersby. The government simply has no business choosing which speech it shall

---

[4] Texas v. Johnson, 488 U.S. ___, 109 S.Ct. 2533 (1989).

[5] Cohen v. California, 403 U.S. 15, 18 (1971).

allow, based solely on how uncomfortable the message makes the listener. Spence v. Washington, 418 U.S. 405, 413 (1974) ("We are unable to affirm the judgment below on the ground that the State may have desired to protect the sensibilities of passersby.").

Implicit in the decision of the Court of Appeals is the notion that the speech involved in begging is necessarily accompanied by specific antisocial acts. But that it is only speech that is at issue is demonstrated by the fact that the respondents have banned -- in unchallenged regulations -- conduct that ". . . harasses, menaces, impedes traffic or otherwise causes harm".(B42)[6] The total ban on begging is thus not a

---

[6]References are to the opinion of the District Court, printed as Appendix B to the Petition for Writ of Certiorari in this case.

narrowly tailored statute, that ". . . targets and eliminates no more than the exact source of the 'evil' it seeks to remedy." Frisby v. Schultz, 487 U.S. 474, 485 (1988) (citing City Council of Los Angeles v. Taxpayers for Vincent, 466 U.S. 789, 808-810 (1984)).

Nor is it enough for the government to demonstrate that beggars can carry their message to the streets above the subways. Cf. Young v. New York City Transit Auth., A33-34. As a practical matter, on the streets above, the homeless and the destitute face the risk of criminal assault, exposure to the elements -- including even death by hypothermia -- and prosecution under New York State law. See N.Y. Penal Law § 240.35(1) (Consol. 1990). Moreover, it is obvious that a beggar's pleas can have no results if they are not heard.

Poor people beg in the subways of New York precisely because there are many people there. The subways of New York City are effectively what the streets of other cities are: places where thousands of potential listeners pass by. The Court of Appeals would allow the government to shunt the beggars from one place to another, and to confine them to places where there is no one to hear their pleas. It cannot thus be said in any meaningful sense that the regulations upheld by the Court of Appeals ". . . leave open ample alternative channels of communication." Perry Educ. Ass'n. v. Perry Local Educators' Ass'n., 460 U.S. 37, 45 (1983).

According to the Court of Appeals, the direct pleas of the needy beneath the streets of our largest city are

necessarily "nothing less than a menace to the common good".A23 Such an expression of values appears not to derive from anything in the record in this case, but rather echoes a common prejudice against the visible destitute. Whereas, in Christian tradition, "the beggar who knocked at the rich man's door was regarded as a messenger from God, and might even be Christ in disguise"[7], as economic dislocation produced multitudes of the desperate poor, some sounded a different theme. "Idle, good for nothing and dangerous, was the verdict passed on the destitute

---

[7] K. Hopper, The Ordeal of Shelter: Continuities and Discontinuities in the Public Response to Homelessness, 4 Notre Dame J. of Law, Ethics and Pub. Pol'y, 301, 304-305 (1989) (citing F. Braudel, The Wheels of Commerce, 506-512 (1982)).

by a society terrified by the rising tide of mendicancy."[8]

Our cultural tradition has included much that is closer to the first theme than the second and that is more consistent with modern views on free expression than the theme of the Court of Appeals. Many people have thought, with Samuel Johnson, that "[a] decent provision for the poor is the true test of civilization."[9] And it was Edmund Burke who wrote:

> Charity to the poor is a direct and obligatory duty upon all Christians, next in order after the payment of debts, and by nature made infinitely more delightful to us. My opinion is against an over-doing of any sort of administration, and more especially against this most momentous of all meddling on the

---

[8] Id.

[9] J. Boswell, The Life of Samuel Johnson, LL.D. 182 (1952) (1st ed. 1791), quoted in Himmelfarb, The Idea of Poverty 1 (1985).

> part of authority; the meddling with the subsistence of the people.[10]

This Court has repeatedly affirmed the principle that all views are entitled to be heard. Perry Educ. Ass'n, 460 U.S. at 56 (state must have compelling reasons in public forum for "restricting access to a single class of speakers, a single viewpoint, or a single subject"). This principle surely embraces the voices of the citizens whose very survival may depend upon their being heard. And there is no precedent for the Court of Appeals' notion that the destitute and homeless must still their own voices, and depend entirely upon organized charities and others to attempt to speak for them.

---

[10] E. Burke, Thoughts and Details on Scarcity, Works, Vol. V, 83-85 (Bohn ed., 1909-12), quoted in Himmelfarb, supra note 9, at 67-68.

II. THE SUPPRESSION OF BEGGING EFFECTIVELY DEPRIVES MANY AMERICANS OF THEIR ONLY MEANS TO SURVIVE.

There can be no doubt that, for many people in our society, begging offers the only hope of survival. Laws that suppress begging put the lives of these people in jeopardy.

Studies and surveys document the fact that basic food and shelter are available only to a fraction of the very poor. The United States Conference of Mayors has determined, for example, that in 1989, in nearly three-fourths of the Conference's cities, emergency food facilities turned away people in need because of lack of resources.[11] Moreover, almost a quarter of the

---

[11] U.S. Conference of Mayors, A Status Report on Hunger and Homelessness in America's Cities: 1989, 3 (December 1989).

homeless people seeking emergency shelter were turned away for lack of space.[12] In 1989, requests for emergency shelter increased overall by an average of twenty-five percent; and more than nine in ten cities expected requests for emergency shelter by homeless persons to increase in 1990.[13] Despite the fact that tens of millions of persons are served meals at soup kitchens and receive food at food banks, in New York alone, over a quarter of million adults suffer from chronic

---

[12] Id. at 2. Waiting lists for low-income housing contained more than one million applicants and many cities refused to take new requests. United States Comm'n on Security and Cooperation in Europe, Homelessness in the United States 41 (1990) (citing National Housing Task Force Report, A Decent Place to Live (1988)).

[13] U.S. Conference of Mayors, supra note 11, at 3.

hunger, with over half a million more routinely hungry.[14]

Many people who can find food or shelter by no other means are forced to beg from strangers. Thus, one in three of the homeless persons surveyed in Chicago received income likely to have come from begging.[15] Other studies estimate that 12 to 14% of the homeless depend in part on money obtained from begging.[16]

---

[14] Food Security and Methods of Assessing Hunger in the United States: Hearings before the House Select Comm. on Hunger, 101 Cong., 1st Sess., 16 (1989). See also U.S. Conference of Mayors, supra note 11, at 7-16.

[15] P. Rossi, Down and Out in America: The Origins of Homelessness 108 (1989).

[16] R. Farr, P. Koegel & A. Burnam, A Study of Homelessness & Mental Illness in the Skid Row Area of Los Angeles 205 (1986); M. Sosin, P. Colun, & S. Grossman, Homelessness in Chicago: Poverty and Pathology, Social Institutions and Social Change, Table 5.5 (June 1988) (University of Chicago,

A. Many Americans Are Ineligible for Any Form of Public Assistance, Do Not Receive Public Assistance, Or Receive Assistance Insufficient to Meet Survival Needs.

Most Americans assume that the oft-cited "social safety net" of governmental programs is sufficient to prevent hunger and homelessness for nearly everyone. And, indeed, the public sector does provides a network of public assistance programs of last resort. Eligibility for the programs, however, is limited to specific sectors of the poor. There is in fact no "safety net" for the millions of Americans who do not meet eligibility requirements such as age, disability, or family status. The "safety net" includes assistance programs for certain

---

School of Social Service Administration study).

categories of people: some of the recently unemployed, the long-term disabled, and families with children. For all the others, however, many states provide no assistance at all. Moreover, for many people eligible in theory for assistance from the programs that do exist, the bureaucratic procedures necessary to obtain benefits present an insurmountable obstacle, particularly for the mentally disabled poor.

Working people who lose their jobs are eligible for unemployment insurance benefits for a fixed number of weeks. But only a small and declining proportion of unemployed workers are covered by unemployment insurance, resulting in only one in three unemployed workers even eligible for

benefits.[17] More than one-third of all recipients run out of benefits before finding another job.[18]

For those unable to work at all by reason of serious, long-term disabilities, blindness, or age, the federal Supplemental Security Income ("SSI") programs provides subsistence assistance. The current monthly federal SSI benefit is $386 per month.[19] Many

---

[17] See Homelessness in the United States, supra note 12, at 41. Between 1975 and 1983, the percentage of jobless Americans receiving unemployment insurance benefits declined from 78% to 39%, while the benefits provided dropped by 25%, to an average of $89.82 per week. See S. Danziger & P. Gottschalk, Unemployment Insurance and the Safety Net for the Unemployed, in Unemployment Insurance 52, 61 (W. Hansen & J. Byers, eds. 1990); M. Katz, In the Shadow of the Poorhouse: A Social History of Welfare in America 287 (1986).

[18] M. Katz, The Undeserving Poor: From the War on Poverty to the War on Welfare 244 (1989).

[19] 20 C.F.R. §§ 416.405 -.410 (1989).

of the disabled or aged poor who are theoretically eligible for SSI receive no benefits. Nationwide, as many as 50% of those eligible for SSI do not receive it.[20]

The largest "safety-net" program is restricted to families with dependent children: Aid to Families with Dependent Children ("AFDC"). Each state determines the standard of need and sets the level of benefits,[21]

---

[20] S. Pogatchnik, Up to 4.6 Million Are Losing Out on Special Benefits, The Los Angeles Times, April 6, 1990, 23, col. 1 (Social Security Commissioner Gwendolyn S. King, testifying before a congressional committee, estimated that 35-50% of persons eligible to receive SSI do not receive benefits, primarily because they do not know about the program or cannot complete the unwieldy 15 page application.) See also Families USA, SSI Aware 1 (April 1989) (survey of Boston area SSI eligible population).

[21] 45 C.F.R. 233.20(a)(2) (1989). See Quern v. Mandley, 436 U.S. 725, 738 (1978).

resulting in widely disparate benefits: In Alabama, for example, the monthly AFDC grant for a 3 person family is $118, 15% of the 1988 federal poverty level; in 29 states the combined total of food stamps and AFDC assistance amount to 75% or less of the poverty level.[22] The erosion in value of AFDC benefits is well-documented: from 1968 to 1985, the purchasing power of AFDC benefits declined by 63%.[23]

For the temporarily disabled, the long-term unemployed, the single person without children, there is often no public assistance program at all. In some states there is a "safety net" program called general assistance, which is limited both in scope and level of

---

[22] 20 Housing Law Bulletin, 65, 67, 79 (July/August 1990).

[23] Rossi, supra note 15, at 191.

benefits. For example, in Alabama, an indigent blind person can receive state assistance of $125 per month.[24] A single person who is not disabled receives no assistance at all in twenty-nine states and the District of Columbia.[25] Additionally, nine states

---

[24]Ala. Code §§ 38-4-1; 38-5-1 (1990).

[25] Urban Research & Eng'g, Inc., Characteristics of General Assistance Programs (U.S. Dept. of Commerce, No. PB 84-115336, May 1983) (hereafter Characteristics) (States providing no general assistance programs or subsistence grants only to families or the disabled include: Alabama, Colorado, Delaware, the District of Columbia, Florida, Georgia, Hawaii, Kentucky, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Nevada, New Mexico, North Carolina, Oregon, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, Washington, and West Virginia. A few counties offer general assistance in Idaho, Iowa, New Jersey and Virginia, but no statewide program exists). See also Langdon & Kass, Homelessness in America: Looking for the Right to Shelter, 19 Colum. J.L. & Soc. Probs. 305, 366-78 (1985) (fifty state survey of shelter and general assistance statutes).

that do have a general assistance program in theory, stringently limit program funding and provide assistance only to the extent that the funds are budgeted and available.[26] The size of the grant from those states that do provide some assistance is nearly always inadequate to meet basic housing and food needs. In California, administration of the general assistance program is left to the discretion of local counties. Five counties provide a subsidy of less than $50 per month for all needs of an indigent person, and in forty-five of the fifty-eight California

---

[26] Characteristics, supra note 25. These states are: Arkansas, Louisiana, Michigan, Nebraska, North Dakota, Oklahoma, Pennsylvania, South Dakota, and Wyoming. Other states with subsistence programs for special categories limit budgeting and funding for disability or family stipends: Colorado, Georgia, North Carolina, Tennessee, Texas, and Vermont. See also Langdon & Kass, supra note 25.

counties, the grant level is less than $200 a month.[27] Regional studies document that only a fraction of those eligible actually receive general assistance benefits, ranging from 22% of those eligible in Chicago to 36% of those eligible in New York City.[28]

Even in the states that provide some form of general assistance, complex procedures and requirements often result in a denial of benefits to those least able to negotiate a welfare bureaucracy. One study found that 22% of general assistance recipients in New York are terminated from the program, 79% of those for reasons unrelated to financial need. In Los Angeles 75% were similarly

---

[27] Benzinger, From Public Charity to Social Justice: The Role of the Court in California's General Relief Program, 21 Loy. L.A.L. Rev. 497, 507 (1988).

[28] Rossi, supra note 15, at 196; Langdon & Kass, supra note 25, at 316.

denied. In Chicago, 73.8% of those terminated were denied subsistence benefits for reasons having nothing to do with need: the great majority of persons were terminated for missing an appointment.[29]

B. Despite the Generosity of Americans, Charities Do Not Provide for the Basic Needs of the Destitute.

Government does not, of course, address the needs of the destitute alone: the private sector is potentially an important source of assistance for the indigent. Indeed, at one time private charity, particularly through churches, accounted for over half of all

---

[29] D. Lasdon & D. Tobias, Below the Safety Net: A Study of Soup Kitchen Users in New York City 50 (1987); Sosin, Colun & Grossman, supra note 16, at 216 (66% of terminations in Chicago over a six month period were for missing an appointment or other minor rule violation); Farr, Koegel & Burnam, supra note 16, at 216-17.

assistance provided to the needy in this country. But between the 1930s and 1980s, that proportion declined to less than 1 per cent.[30] Most American charity comes from individuals. In 1988, foundations accounted for only 5.9% of total giving, and corporations another 4.6%.[31] Most of the contributions of individual Americans go to religious organizations, education, and health. In 1989, only 8.1% of total charitable contributions went to social services for the needy.[32]

---

[30] Private Sector Initiatives to Feed America's Poor: Hearings Before the Senate Comm. on Agriculture, Nutrition & Forestry, 98 Cong. 1st Sess., 25 (1983).

[31] America's Social Challenge: When Generosity is Not Enough, The Financial Times, June 1, 1990, § I, at 18, col. 1.

[32] Independent Sector, Giving and Volunteering in the United States, Table 1.2 at 26 (1990).

Even within the fraction of charitable giving directed toward the needy, some are treated as more "worthy" than others. Women, families with children, and the physically disabled are much more likely to be the objects of charity than are chronic unemployed men or the bedraggled mentally ill.[33] Very few homeless individuals are helped by organized private charities. For example, a systematic survey of homeless people in Chicago found that only 8.1% received private charity, compared to 14.1% who survived by begging.[34]

Plainly, neither organized charity nor public assistance programs are

---

[33] J. Handler & M. Sosin, Last Resorts: Emergency Assistance and Special Needs Programs in Public Welfare, 195, 200, 208-09, 213 (1983).

[34] M. Sosin, P. Colun, S. Grossman, Homelessness In Chicago, supra note 16, at Table 5.5.

meeting the bare subsistence needs of many Americans. Despite the best intentions of the public and private sectors, many of our fellow citizens can live only if they can beg, and they can beg only if they can convey to their fellow citizens the message of need that is an integral part of their appeal for help.

CONCLUSION

This Court has often ". . . remarked on the unique nature of the home, 'the last citadel of the tired, the weary, and the sick'", ". . . the one retreat to which men and women can repair to escape from the tribulations of their daily pursuits. . ." Frisby v. Schultz, 487 U.S. 474, 484 (citing Carey v. Brown, 447 U.S. at 471 (1980), and Gregory v. Chicago, 394 U.S. 111, 125 (1969) (Black, J., concurring)). But

for many Americans, including many who are "the tired, the weary, and the sick", there is no home to which to escape. Unless this Court acts to reverse the decision of the Court of Appeals, they will now also be deprived even of the right to speak directly of their circumstances, and to ask for help.

For all the foregoing reasons, the Court should grant the Writ of Certiorari sought by Petitioners.

Respectfully submitted,

*Gary L. Blasi
2026 Lake Shore Avenue
Los Angeles, California 90039
Telephone: (213) 663-8731

Loretta M. Lynch
Tha Win
Robert M. Hayes

Counsel for Amicus Curiae
National Coalition for the Homeless, Inc.

*Counsel of Record